

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LEROY GOMEZ,

Plaintiff,

v.

CYNTHIA NORRIS, et al.,

Defendants.

Case No. 1:20-cv-00662-AWI-BAM

FINDINGS AND RECOMMENDATIONS
REGARDING DISMISSAL OF ACTION,
WITH PREJUDICE, FOR FAILURE TO
STATE A CLAIM, FAILURE TO OBEY A
COURT ORDER, AND FAILURE TO
PROSECUTE

(Doc. Nos. 10, 13)

FOURTEEN (14) DAY DEADLINE

I. Background

Plaintiff Leroy Gomez ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, filed this action on May 11, 2020. (Doc. No. 1.)

On June 26, 2020, the Court screened Plaintiff's complaint and granted him leave to file an amended complaint within thirty (30) days of service of the Court's order. (Doc. No. 10.) Plaintiff was warned that if he failed to file an amended complaint in compliance with the Court's order, then the Court would recommend dismissal of this action, with prejudice, for failure to obey a court order and for failure to state a claim. (*Id.*)

On July 20, 2020, the Court granted Plaintiff's request for an extension of time to amend

1 his complaint. The Court extended the deadline for an additional thirty (30) days from the date of
2 service of the order. (Doc. No. 13.) Based on that order, Plaintiff's amended complaint, if any,
3 was due no later than August 24, 2020.

4 The deadline for Plaintiff to file his amended complaint has passed, and Plaintiff has not
5 filed an amended complaint or otherwise contacted this Court. The Court will therefore
6 recommend that this action be dismissed, with prejudice, for failure to state a claim, for failure to
7 obey a court order, and for failure to prosecute.

8 II. Discussion

9 Local Rule 110 provides that "[f]ailure . . . of a party to comply with these Rules or with
10 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . .
11 within the inherent power of the Court." District courts have the inherent power to control their
12 dockets and "[i]n the exercise of that power they may impose sanctions including, where
13 appropriate, . . . dismissal." *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A
14 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action,
15 failure to obey a court order, or failure to comply with local rules. *See, e.g., Ghazali v. Moran*, 46
16 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*,
17 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring
18 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987)
19 (dismissal for failure to comply with court order).

20 In determining whether to dismiss an action, the Court must consider several factors: (1)
21 the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its
22 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
23 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779
24 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988).

25 Here, although this action has been pending only since May 2020, Plaintiff's amended
26 complaint is overdue despite an extension of time to amend. The Court cannot hold this case in
27 abeyance awaiting compliance by Plaintiff. The Court additionally cannot effectively manage its
28 docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and second

1 factors weigh in favor of dismissal.

2 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a
3 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action.
4 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs
5 against dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*,
6 291 F.3d 639, 643 (9th Cir. 2002). However, “this factor lends little support to a party whose
7 responsibility it is to move a case toward disposition on the merits but whose conduct impedes
8 progress in that direction,” which is the case here. *In re Phenylpropanolamine (PPA) Prods.*
9 *Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted).

10 Finally, the court’s warning to a party that failure to obey the court’s order will result in
11 dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262;
12 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s June 26, 2020 screening order
13 expressly warned Plaintiff that his failure to comply would result in a recommendation for
14 dismissal of this action. (Doc. No. 10 at 8.) Thus, Plaintiff had adequate warning that dismissal
15 could result from his noncompliance.

16 Additionally, at this stage in the proceedings there is little available to the Court that
17 would constitute a satisfactory lesser sanction while protecting the Court from further
18 unnecessary expenditure of its scarce resources. Plaintiff is proceeding in forma pauperis in this
19 action, indicating that monetary sanctions are of little use, and the preclusion of evidence or
20 witnesses is likely to have no effect given that Plaintiff has ceased litigating his case.

21 **III. Conclusion and Recommendation**

22 Accordingly, it is HEREBY RECOMMENDED that this action be dismissed, without
23 prejudice, for Plaintiff’s failure to state a claim, failure to obey the Court’s order and failure to
24 prosecute this action.

25 These Findings and Recommendations will be submitted to the United States District
26 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
27 **fourteen (14) days** after being served with these Findings and Recommendations, Plaintiff may
28 file written objections with the Court. The document should be captioned “Objections to

1 Magistrate Judge’s Findings and Recommendations.” Plaintiff is advised that failure to file
2 objections within the specified time may result in the waiver of the “right to challenge the
3 magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014)
4 (*citing Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

5
6 IT IS SO ORDERED.

7 Dated: September 3, 2020

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE